

“(i) for each insurable commodity on the farm, the product obtained by multiplying—

“(I) 100 percent of the price election for the commodity used to calculate an indemnity for an applicable policy of insurance if an indemnity is triggered; and

“(II) the quantity of the commodity produced on the farm, adjusted for quality losses; and

“(ii) for each noninsurable commodity on a farm, the product obtained by multiplying—

“(I) 100 percent of the noninsured crop assistance program established price for the commodity; and

“(II) the quantity of the commodity produced on the farm, adjusted for quality losses.”.

(3) **WAIVER FOR SOCIALLY DISADVANTAGED, LIMITED RESOURCE, OR BEGINNING FARMER OR RANCHER.**—Section 901(d)(5)(B)(ii) of the Trade Act of 1974 (19 U.S.C. 2497(d)(5)(B)(ii)) is amended by striking “section” and inserting “subsection”.

(4) **TREE ASSISTANCE PROGRAM.**—Section 901(f)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2497(f)(2)(A)) is amended by striking “the Secretary shall provide” and inserting “the Secretary shall use such sums as are necessary from the Trust Fund to provide”.

(5) **DE MINIMIS EXCEPTION TO RISK MANAGEMENT PURCHASE REQUIREMENT.**—Section 901(g) of the Trade Act of 1974 (19 U.S.C. 2497(g)) is amended by adding at the end the following:

“(6) **DE MINIMIS EXCEPTION.**—

“(A) **IN GENERAL.**—For purposes of assistance under subsection (b), at the option of an eligible producer on a farm, the Secretary shall waive paragraph (1)—

“(i) in the case of a portion of the total acreage of a farm of the eligible producer that is not of economic significance on the farm, as established by the Secretary; or

“(ii) in the case of a crop for which the administrative fee required for the purchase of noninsured crop disaster assistance coverage exceeds 10 percent of the value of that coverage.

“(B) **TREATMENT OF ACREAGE.**—The Secretary shall not consider the value of any crop exempted under subparagraph (A) in calculating the supplemental revenue assistance program guarantee under subsection (b)(3) and the total farm revenue under subsection (b)(4).”.

(6) **RISK MANAGEMENT PURCHASE REQUIREMENT WAIVER FOR 2009 CROP YEAR.**—Section 901(g) of the Trade Act of 1974 (19 U.S.C. 2497(g)) is amended—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking “(other than subsection (c))” and inserting “(other than subsections (c) and (d))”; and

(ii) in subparagraph (A), by inserting “, excluding grazing land” after “producers on the farm”;

(B) in paragraph (2), by striking “grazed, planted,” and inserting “planted”;

(C) in paragraph (4), by striking “(4)” and all that follows through “In the case” and inserting the following:

“(4) **WAIVERS FOR CERTAIN CROP YEARS.**—

“(A) **2008 CROP YEAR.**—In the case”; and

(D) by adding at the end the following:

“(B) **2009 CROP YEAR.**—In the case of an insurable commodity or noninsurable commodity for the 2009 crop year that does not meet the requirements of paragraph (1) and the relevant crop insurance program sales closing date or noninsured crop assistance program fee payment date was prior to August 14, 2008, the Secretary shall waive paragraph (1) if the eligible producer of the insurable commodity or noninsurable commodity pays a fee in an amount equal to the applicable noninsured crop assistance program fee or catastrophic risk protection plan fee re-

quired under paragraph (1) to the Secretary not later than 90 days after the date of enactment of this subparagraph.”.

(7) **PAYMENT LIMITATIONS.**—Section 901(h) of the Trade Act of 1974 (19 U.S.C. 2497(h)) is amended by adding at the end the following:

“(5) **TRANSITION RULE.**—Sections 1001, 1001A, 1001B, and 1001D of the Food Security Act of 1985 (7 U.S.C. 1308 et seq.) as in effect on September 30, 2007, shall continue to apply with respect to 2008 crops.”.

SA 5680. Mr. COBURN submitted an amendment to be proposed by him to the House amendment to the Senate amendment to H.R. 2095, to amend title 49, United States Code, to prevent railroad fatalities, injuries, and hazardous materials releases, to authorize the Federal Railroad Safety Administration, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in the House amendment, insert the following:

SEC. ____ FOOD AND BEVERAGE SERVICES.

The National Railroad Passenger Corporation (referred to in this section as “Amtrak”) may not provide food and beverage services on any rail line operated by Amtrak if the cost of such services exceeds the price charged for such services.

SA 5681. Mr. COBURN submitted an amendment to be proposed by him to the House amendment to the Senate amendment to H.R. 2095, to amend title 49, United States Code, to prevent railroad fatalities, injuries, and hazardous materials releases, to authorize the Federal Railroad Safety Administration, and for other purposes; which was ordered to lie on the table; as follows:

In the House amendment, strike title VI and insert the following:

TITLE VI—AUTHORIZATION FOR CAPITAL AND PREVENTIVE MAINTENANCE PROJECTS FOR WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SEC. ____ AUTHORIZATION FOR CAPITAL AND PREVENTIVE MAINTENANCE PROJECTS FOR WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY.

(a) **AUTHORIZATION.**—

(1) **IN GENERAL.**—The States of Maryland and Virginia and the District of Columbia may expend Federal transportation grants, including any funds earmarked for Congressionally directed spending, for the purpose of financing in part the capital and preventive maintenance projects included in the Capital Improvement Program approved by the Board of Directors of the Transit Authority.

(2) **DEFINITIONS.**—In this section—

(A) the term ‘Transit Authority’ means the Washington Metropolitan Area Transit Authority established under Article III of the Compact; and

(B) the term ‘Compact’ means the Washington Metropolitan Area Transit Authority Compact (80 Stat. 1324; Public Law 89-774).

(b) **USE OF FUNDS.**—The Federal grants made pursuant to the authorization under this section shall be subject to the following limitations and conditions:

(1) The work for which such Federal grants are authorized shall be subject to the provisions of the Compact (consistent with the amendments to the Compact).

(2) Federal funding shall be no more than 50 percent of the net project cost of the project involved, and shall be provided in cash from sources other than Federal funds or revenues from the operation of public mass transportation systems.

SA 5682. Mr. COBURN submitted an amendment intended to be proposed by him to the House amendment to the Senate amendment to H.R. 2095, to amend title 49, United States Code, to prevent railroad fatalities, injuries, and hazardous materials releases, to authorize the Federal Railroad Safety Administration, and for other purposes; which was ordered to lie on the table; as follows:

In the House amendment, strike title VI.

NOTICES OF INTENT TO OBJECT TO PROCEEDING

Mr. KERRY, pursuant to the provisions of section 512 of Public Law 110-81, submitted his notice of intent to object to proceed to consider the resolution (S. Res. 626), expressing the sense of the Senate that the Supreme Court of the United States erroneously decided *Kennedy v. Louisiana*, No. 07-343 (2008), and that the eighth amendment to the Constitution of the United States allows the imposition of the death penalty for the rape of a child, dated July 25, 2008, for the following reasons:

The Supreme Court has already shown its intention to revisit the *Kennedy v. Louisiana* decision. The Court has petitioned the parties in the case, as well as the United States Solicitor General, to submit supplemental briefs in response to the standing Petition for Rehearing. Due to these pending proceedings I believe the United States Senate should not take action at this time as it would be inappropriately premature.

Mr. GRASSLEY, pursuant to the provisions of section 512 of Public Law 110-81, submitted his notice of intent to object to proceed to consider the bill (H.R. 7083) to amend the Internal Revenue Code of 1986 to enhance charitable giving and improve disclosure and tax administration, dated September 26, 2008, for the following reasons:

I wrote a series of charitable reforms that became law in the Pension Protection Act of 2006. The reforms grew out of my oversight of tax-exempt organizations and laws, which had not been updated substantially since 1969. This legislation would unwind some of the 2006 reforms as they apply to certain supporting organizations.

Private foundations and supporting organizations enjoy tax-exempt status on their money. In exchange for that special status, they have to comply with a few requirements. One is that they pay out 5 percent of their assets each year. This pay-out requirement is meant to make sure the organization offers some public benefit in exchange for tax exemption and doesn't exist simply to invest its money and pay a staff and a board of directors—often family members—in perpetuity. Another requirement is that private foundations and certain supporting organizations are subject to a tax on excess business holdings. In general, the tax applies to substantial interests these

organizations may hold in corporations and other businesses. The tax is designed to make sure tax-exempt organizations don't shelter oil refineries and yacht clubs from paying taxes.

A handful of organizations argue that these requirements are onerous or that they should be exempt because they were created before 1969. There may be legitimate reasons to look at some of these issues, but this legislation as written is much too broad. Thousands of organizations could be carved out of the payout requirement and business holdings prohibition. The bill would unwind regulations implementing the 2006 reforms before the regulations are even finished. It contains several provisions that need much more study before being enacted. For all of these reasons, the legislation needs more work.

PRIVILEGES OF THE FLOOR

Mr. WARNER. Mr. President, I ask unanimous consent that T.J. Kim, a fellow of the Environment and Public Works Committee, be granted floor privileges.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. WARNER. I ask unanimous consent that Kory Sylvester, a member of Senator DOMENICI's appropriations staff, have floor privileges today.

The PRESIDING OFFICER. Without objection, it is so ordered.

RENEWABLE ENERGY AND JOB CREATION ACT OF 2008

On Tuesday, September 23, 2008, the Senate passed H.R. 6049, as amended, as follows:

H.R. 6049

Resolved, That the bill from the House of Representatives (H.R. 6049) entitled "An Act to amend the Internal Revenue Code of 1986 to provide incentives for energy production and conservation, to extend certain expiring provisions, to provide individual income tax relief, and for other purposes.", do pass with the following amendment:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE, ETC.

(a) *SHORT TITLE*.—This Act may be cited as the "Energy Improvement and Extension Act of 2008".

(b) *REFERENCE*.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) *TABLE OF CONTENTS*.—The table of contents for this Act is as follows:

Sec. 1. Short title, etc.

TITLE I—ENERGY PRODUCTION INCENTIVES

Subtitle A—Renewable Energy Incentives

Sec. 101. Renewable energy credit.

Sec. 102. Production credit for electricity produced from marine renewables.

Sec. 103. Energy credit.

Sec. 104. Energy credit for small wind property.

Sec. 105. Energy credit for geothermal heat pump systems.

Sec. 106. Credit for residential energy efficient property.

Sec. 107. New clean renewable energy bonds.

Sec. 108. Credit for steel industry fuel.

Sec. 109. Special rule to implement FERC and State electric restructuring policy.

Subtitle B—Carbon Mitigation and Coal Provisions

Sec. 111. Expansion and modification of advanced coal project investment credit.

Sec. 112. Expansion and modification of coal gasification investment credit.

Sec. 113. Temporary increase in coal excise tax; funding of Black Lung Disability Trust Fund.

Sec. 114. Special rules for refund of the coal excise tax to certain coal producers and exporters.

Sec. 115. Tax credit for carbon dioxide sequestration.

Sec. 116. Certain income and gains relating to industrial source carbon dioxide treated as qualifying income for publicly traded partnerships.

Sec. 117. Carbon audit of the tax code.

TITLE II—TRANSPORTATION AND DOMESTIC FUEL SECURITY PROVISIONS

Sec. 201. Inclusion of cellulosic biofuel in bonus depreciation for biomass ethanol plant property.

Sec. 202. Credits for biodiesel and renewable diesel.

Sec. 203. Clarification that credits for fuel are designed to provide an incentive for United States production.

Sec. 204. Extension and modification of alternative fuel credit.

Sec. 205. Credit for new qualified plug-in electric drive motor vehicles.

Sec. 206. Exclusion from heavy truck tax for idling reduction units and advanced insulation.

Sec. 207. Alternative fuel vehicle refueling property credit.

Sec. 208. Certain income and gains relating to alcohol fuels and mixtures, biodiesel fuels and mixtures, and alternative fuels and mixtures treated as qualifying income for publicly traded partnerships.

Sec. 209. Extension and modification of election to expense certain refineries.

Sec. 210. Extension of suspension of taxable income limit on percentage depletion for oil and natural gas produced from marginal properties.

Sec. 211. Transportation fringe benefit to bicycle commuters.

TITLE III—ENERGY CONSERVATION AND EFFICIENCY PROVISIONS

Sec. 301. Qualified energy conservation bonds.

Sec. 302. Credit for nonbusiness energy property.

Sec. 303. Energy efficient commercial buildings deduction.

Sec. 304. New energy efficient home credit.

Sec. 305. Modifications of energy efficient appliance credit for appliances produced after 2007.

Sec. 306. Accelerated recovery period for depreciation of smart meters and smart grid systems.

Sec. 307. Qualified green building and sustainable design projects.

Sec. 308. Special depreciation allowance for certain reuse and recycling property.

TITLE IV—REVENUE PROVISIONS

Sec. 401. Limitation of deduction for income attributable to domestic production of oil, gas, or primary products thereof.

Sec. 402. Elimination of the different treatment of foreign oil and gas extraction income and foreign oil related income for purposes of the foreign tax credit.

Sec. 403. Broker reporting of customer's basis in securities transactions.

Sec. 404. 0.2 percent FUTA surtax.

Sec. 405. Increase and extension of Oil Spill Liability Trust Fund tax.

TITLE I—ENERGY PRODUCTION INCENTIVES

Subtitle A—Renewable Energy Incentives

SEC. 101. RENEWABLE ENERGY CREDIT.

(a) *EXTENSION OF CREDIT*.—

(1) *1-YEAR EXTENSION FOR WIND AND REFINED COAL FACILITIES*.—Paragraphs (1) and (8) of section 45(d) are each amended by striking "January 1, 2009" and inserting "January 1, 2010".

(2) *2-YEAR EXTENSION FOR CERTAIN OTHER FACILITIES*.—Each of the following provisions of section 45(d) is amended by striking "January 1, 2009" and inserting "January 1, 2011":

(A) Clauses (i) and (ii) of paragraph (2)(A).

(B) Clauses (i)(I) and (ii) of paragraph (3)(A).

(C) Paragraph (4).

(D) Paragraph (5).

(E) Paragraph (6).

(F) Paragraph (7).

(G) Subparagraphs (A) and (B) of paragraph (9).

(b) *MODIFICATION OF REFINED COAL AS A QUALIFIED ENERGY RESOURCE*.—

(1) *ELIMINATION OF INCREASED MARKET VALUE TEST*.—Section 45(c)(7)(A)(i) (defining refined coal), as amended by section 108, is amended—

(A) by striking subclause (IV),

(B) by adding "and" at the end of subclause (II), and

(C) by striking "and" at the end of subclause (III) and inserting a period.

(2) *INCREASE IN REQUIRED EMISSION REDUCTION*.—Section 45(c)(7)(B) (defining qualified emission reduction) is amended by inserting "at least 40 percent of the emissions of" after "nitrogen oxide and".

(c) *TRASH FACILITY CLARIFICATION*.—Paragraph (7) of section 45(d) is amended—

(1) by striking "facility which burns" and inserting "facility (other than a facility described in paragraph (6)) which uses", and

(2) by striking "COMBUSTION".

(d) *EXPANSION OF BIOMASS FACILITIES*.—

(1) *OPEN-LOOP BIOMASS FACILITIES*.—Paragraph (3) of section 45(d) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) *EXPANSION OF FACILITY*.—Such term shall include a new unit placed in service after the date of the enactment of this subparagraph in connection with a facility described in subparagraph (A), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit."

(2) *CLOSED-LOOP BIOMASS FACILITIES*.—Paragraph (2) of section 45(d) is amended by redesignating subparagraph (B) as subparagraph (C) and inserting after subparagraph (A) the following new subparagraph:

"(B) *EXPANSION OF FACILITY*.—Such term shall include a new unit placed in service after the date of the enactment of this subparagraph in connection with a facility described in subparagraph (A)(i), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit."

(e) *MODIFICATION OF RULES FOR HYDROPOWER PRODUCTION*.—Subparagraph (C) of section 45(c)(8) is amended to read as follows:

"(C) *NONHYDROELECTRIC DAM*.—For purposes of subparagraph (A), a facility is described in this subparagraph if—

"(i) the hydroelectric project installed on the nonhydroelectric dam is licensed by the Federal Energy Regulatory Commission and meets all other applicable environmental, licensing, and regulatory requirements,

"(ii) the nonhydroelectric dam was placed in service before the date of the enactment of this paragraph and operated for flood control, navigation, or water supply purposes and did not